IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 488 OF 2007

1. Mr. Joseph Sequeira,
   Member, V. P. Calangute,
   R/o Gaurowado, Calangute,
   Goa.

2. Mr. Alex M. Trinade Fernandes,
   Member, V. P. Calangute,
   R/o Porbawado, Calangute,
   Bardez, Goa.

3. Mr. Vinayak D. Salgaonkar,
   Member, V. P. Calangute,
   R/o Porbawado, Calanguet,
   Bardez, Goa.

4. Ms. Ana Maria Casino D'Souza,
   Member, V. P. Calangute,
   R/o Naikwado, Calangute,
   Bardez, Goa.

5. Mrs. Sneha Gajanan Salgaonkar
   Member, V. P. Calangute,
   R/o Gaurawado, Calangute,
   Bardez, Goa.

6. Mr. Laxman Jagnath Parab,
   Member, V. P. Calangute,
   R/o Naikawaddo, Calangute,
   Bardez, Goa. ... Petitioners

versus

1. Mr. Menino D'Souza,
   Director of Panchayats,
   Government of Goa,
   Junta House,
   Panaji, Goa.

2. The Block Development Officer,
   Mapusa, Bardez, Goa.

3. The Secretary,
   Village Panchayat of Calangute,
   Post Office Calangute,
   Bardez, Goa.

4. Mr. Agnelo alias Albert Fernandes
   Sarpanch, V. P. Calangute,
   R/o 7/3, Santa wado
   Calangute, Bardez, Goa.

5. Mrs. Rupa C. Chodankar,
   Deputy Sarpanch, V. P. Calangute,
   R/o H. No. 192/A,
   Naikwado, Calangute,
   Bardez, Goa.

6. Secretary(Panchayats),
   Government of Goa,
   Secretariat, Alto-Porvorim,
   Bardez, Goa.

7. State of Goa
   through its Chief Secretary,
   Secretariat,
   Alto-Porvorim, Goa. ... Respondents

Mr. A. N. S. Nadkarni and Mr. H. D. Naik, Advocates for the Petitioners.

Mr. S. S. Kantak, Advocate General with Mr. S. R. Rivonkar, Government Advocate for the Respondent Nos.1, 2, 6 and 7.

Mr. S. D. Lotlikar, Senior Advocate with Mr. G. Teles, Advocate for the Respondent Nos.4 and 5.

CORAM : R. S. MOHITE &
N. A. BRITTO, JJ.

DATE : 17TH OCTOBER, 2007.

ORAL JUDGMENT

By consent heard forthwith.

2. Rule.

3. Heard all parties.

4. The petition seeks to quash an ex-parte Judgment and Order dated 4-10-2007 passed by the Director of Panchayats. By the impugned Judgment and Order, the Director of Panchayats has suspended a resolution dated 1-10-2007 passed by the Village Panchayat of Calangute in Panchayat Petition No.17/2007 and the Respondents are restrained from executing the said resolution. The said petition No. 17/2007 was filed by the present Respondent Nos.4 and 5 before the Director of Panchayats under Section 178(1) of the Goa Panchayat Raj Act, 1994. By the impugned Order, the Director acting under Section 178(2) of the said Act extended a copy of the order along with the proceedings of the case to the Secretary(Panchayats), Government of Goa, for passing appropriate order in the matter in accordance to law. The matter is still pending with the Secretary.

5. The second relief which is sought in this petition is for a writ directing Respondent Nos.1, 2 and 3 to forthwith hold the elections to the posts of Sarpanch and Deputy Sarpanch of the Village Panchayat of Calangute.

6. When this petition was heard on 15-10-2007, we had directed the issue of notice to Respondent No.3 with a further direction to him to file an affidavit clearly indicating as to how the vote of confidence was taken up, so as to conclude that 6 Members supported the No Confidence Motion and 5

Members opposed it. We had also observed that it was expected that a decision would be taken before the Secretary(Panchayats) on the same day, as the matter was fixed before him at 2.30 p.m. We are informed that the matter is still not decided.

7. Be that as it may, in pursuance of our directions the Secretary has filed an affidavit affirmed on 16-10-2007.

8. On perusing the Minutes of the Meeting in which a No Confidence Motion was moved against the Sarpanch as well as the Deputy Sarpanch and the affidavit filed by the Secretary, it is clear that 6 persons voted in favour of the No Confidence Motion and 5 persons did not support the said No Confidence Motion. This appears to be the position in respect of the No Confidence Motion against the Sarpanch as well as the Deputy Sarpanch. Learned Senior Counsel on behalf of Respondent Nos.4 and 5 contended that the entire procedure which was followed was not in accordance with the procedure contemplated by Rules 12 to 23 of the Goa Panchayat(Meetings) Rules, 1996. It was contended that the procedure prescribed by the statutory rules is a detailed procedure. Under Rule 12 a Member who has given notice of a motion is first required to move the motion and to commence his speech by a formal motion in terms appearing on the list of business and then the motion is required to be seconded. Under Rule 13, after the motion has been proved and seconded, the person presiding shall propose the question by reading the motion for consideration of the Panchayat . Under Rule 16 the Members are to address the question which

has been raised and a debate is permitted. Thereafter under Rule 18 the mover may support his motion and the seconder may either follow or reserve his speech. Under Rule 19, the mover and the seconder has a right to reply to the debate and thereafter under Rule 21, on the conclusion of the debate if the person presiding is satisfied that the motion has been sufficiently discussed, he may put the motion to move. Under Rule 23, votes are to be ordinarily taken by a show of hands but if the majority of members so decide, they can be taken by secret ballot.

9. It does appear to us that this procedure has not been strictly followed. The Minutes of the Meeting indicate that it was only after the entire debate that Mr. Vinayak Salgaokar moved the motion of No Confidence and thereafter the same was seconded. It appears that after the motion was moved and seconded there was no discussion which was required to follow and the same was passed by majority of 6 members.

10. It does not appear that the intention of the meeting rules is to allow a debate after the No Confidence Motion has been moved. Prima facie the said debate did not follow the moving of the motion though there was some discussion before the motion was moved.

11. In the circumstances, we feel that the proceedings of the meeting of the Village Panchayat of Calangute as reflected in the Minutes of the Special Meeting of the Village Panchayat of Calangute dated 1-10-2007 are quashed. Consequently, the entire proceedings under Section 178 of the

Goa Panchayat Raj Act, 1994, do not survive as they have become infructuous. However, in view of our observation that 6 Members appear to have supported the motion of No Confidence, we give a direction that a fresh meeting will be held on Sunday, 21st October, 2007 at 11.00 a.m. at the Panchayat Office for reconsidering the No Confidence Motion dated 18th September, 2007. It is made clear that during the meeting the Secretary of the Panchayat as well as the Presiding Officer will take care to see that the procedure prescribed by the Goa Panchayat(Meetings) Rules, 1996 are scrupulously followed and that they will be held personally responsible and liable in case there is any breach in the prescribed procedure or the accurate recording of the minutes.

12. The learned Counsel for the Petitioners states that they will serve notice of the same to the Secretary. The Secretary/Secretary in charge, will ensure that other members are served.

13. We direct that Shri Shiv Prasad, Bardez B.D.O. will remain present at the meeting as an observer appointed by this Court. He will, however, not take part in the proceedings.

14. The ad-interim order pertaining to non grant of licenses and construction permissions to continue till the No Confidence Motion is decided against the Sarpanch and the Deputy Sarpanch.

15 Rule made absolute accordingly. Writ Petition stands disposed off.

Authenticated copy of the order be given to the parties.

R. S. MOHITE, J.

N. A. BRITTO, J.

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